



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 7689-02
3 September 2002

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CAPT [REDACTED], USMC [REDACTED]
REVIEW OF NAVAL RECORD (RECONSIDERATION)

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Memo for record dtd 29 Aug 02
(2) BCNR rept to SECNAV in Subject's case
dtd 27 Aug 02, less enclosures
(3) HQMC MMR/PERB memos (two) dtd 29 Aug 02
(4) HQMC MMOA-4 memo dtd 13 Aug 02
(5) Subject's naval record

1. The memorandum for the record at enclosure (1) reflects that pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, verbally requested reconsideration of his previous request, denied on 21 August 2002, that the applicable naval record be corrected by removing his failure of selection before the Fiscal Year (FY) 2003 Major Selection Board, so that he may be considered by the selection board next convened to consider officers of his category for promotion to major as an officer who has not failed of selection to that grade. Enclosure (1) further indicates that Petitioner did not wish to renew his request, also previously denied, for a special selection board.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer and Zsalman, reviewed Petitioner's allegations of error and injustice on 29 August 2002, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Enclosure (2) is the Report of Proceedings concerning Petitioner's prior case, docket number 3368-02. In that case, this Board granted partial relief, including removal of Petitioner's nonjudicial punishment (NJP) of 19 June 2001. They further directed that the

Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) consider Petitioner's requests to remove two fitness reports, one of which was the report for 7 August 2000 to 7 April 2001, a copy of which is at Tab A. This Board denied Petitioner's request to remove this report, but the HQMC PERB had not considered it.

c. Documentation at enclosure (3) shows that when the HQMC PERB considered Petitioner's case at this Board's direction, they decided to remove both fitness reports at issue, including the report for 7 August 2000 to 7 April 2001.

d. In Petitioner's prior case before this Board, the HQMC office having cognizance over the subject matter of his request to strike his failure of selection for promotion submitted the advisory opinion at enclosure (4). In this opinion, they commented to the effect that Petitioner's request to remove his failure of selection for promotion would have merit and warrant favorable action, if his NJP were set aside and the reviewing officer's comments and marks were removed from his fitness report for 7 August 2000 to 7 April 2001.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

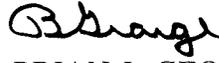
a. That Petitioner's record be corrected so that he will be considered by the earliest possible selection board convened to consider officers of his category for promotion to major as an officer who has not failed of selection for promotion to that grade.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

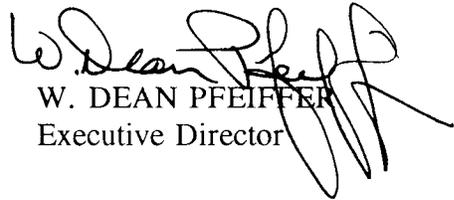
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
AUG 29 2002

From: Commandant of the Marine Corps
To: Captain M [REDACTED] USMC
[REDACTED]

Subj: CORRECTION OF NAVAL RECORD

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in your naval record. Having reviewed all the facts of record, the Board has directed that your naval record will be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
23 Apr 01	LtCol [REDACTED]	000807 to 010407 (TR)
10 Oct 01	LtCol J [REDACTED]	010801 to 010913 (DC)

2. There will be inserted in your naval record a memorandum in place of the removed reports. The memorandum will contain appropriate identifying data concerning the reports and state that they have been removed by direction of the Commandant of the Marine Corps and cannot be made available in any form to selection boards and reviewing authorities. It will also state that such boards may not conjecture or draw any inference as to the nature of the reports or the events which may have precipitated them, unless such events are otherwise properly a part of the official record. The PES (the data base which generates your Master Brief Sheet) will be corrected accordingly.

[REDACTED]

By direction

1610
MMER/PERB

AUG 29 2002

MEMORANDUM

From: Head, Performance Evaluation Review Branch
To: Head, Personnel Management Support Branch

Subj: CORRECTION TO NAVAL RECORD IN THE CASE OF CAPTAIN [REDACTED]
J. [REDACTED] USMC

Ref: (a) MCO 1610.11C

1. Per the reference, the Performance Evaluation Review Board has reviewed allegations of error and injustice in subject's Naval record and the following action is requested:

a. That subject's Naval record be corrected by removing therefrom the following fitness reports:

<u>Date of Report</u>	<u>Reporting Senior</u>	<u>Period of Report</u>
23 Apr 01	LtCol [REDACTED]	000807 to 010407 (TR)
10 Oct 01	LtCol [REDACTED]	010801 to 010913 (DC)

b. That an appropriate "filler memorandum" be inserted in place of the removed reports.

2. Additionally, please ensure that any other files which may contain the subject matter identified in paragraph 1a above are purged of the documentation. Such documentation (paper form, tape, and security file microfiche) is to be returned to the PERB for retention.

3. For Head, MMSB-31: Please correct the PES by removing therefrom any record of the fitness reports identified in paragraph 1a above.

Dahrie J. Hayman
DAHRIE J. HAYMAN

Copy to:
MMSB-31



IN REPLY REFER TO:
1600
MMAA-4
13 Aug 02

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN M [REDACTED]
3 [REDACTED] SMC

Ref: (a) BCNR Request for Advisory Opinion in the case of
Captain M [REDACTED] of 8 Aug 02
(b) BCNR memo AEG 3368-02 of 11 Jun 02

1. Recommend approval of Captain [REDACTED]'s implied request for removal of his failure of selection only if the NJP and the Reviewing Officer comments and marks on the report from 000807 to 010407 are removed from his record.
2. Per reference (a), we reviewed Captain [REDACTED]'s record and petition. Captain [REDACTED] failed selection on the FY03 USMC Major Selection Board.
3. Per reference (b), it is extremely unlikely that the report from 010801 to 010913 was before the board and therefore it is not material to the removal of Captain [REDACTED]'s failure of selection.
4. In our opinion, the Reviewing Officer comments and marks on the report from 000807 to 010407 contains competitive concerns that may have contributed to the failure of selection. Removal of these comments and marks would increase the competitiveness of Captain [REDACTED]'s record. All of the prior reports in Captain [REDACTED]'s record were completed before to the incident that precipitated the NJP and therefore should not be influenced by the incident. With the comments and marks on the report from 000807 to 010407 removed, Captain [REDACTED]'s record still contains considerable competitive jeopardy in the following areas:

a. **Comments and [REDACTED]** The comments on the report from 990801 to 991211 are a competitive concern. When compared to the comments received by his peers being selected for promotion, "I'm still anticipating maturity of judgment in dealing with higher HQ" and "four of four as HQ I&I, seven of eight of all the Capt I&I's I review" remain a competitive concern. Additionally, the Reviewing Officer Comparative Assessment remains below his peers with zero marked below him and 12 marked above him.

Subj: BCNR PETITION FOR CAPTAIN [REDACTED] USMC

b. **Comments from [REDACTED]** The comments on the report from 991212 to 001001 are a competitive concern. When compared to the comments received by his peers being selected for promotion, "Has improved in personal relations with co-located commands" and "Undecided about future in the Corps" remain a competitive concern.

5. In summary, the removal of the Reviewing Officer comments and marks on the report from 000807 to 010407 would improve the competitiveness of Capt [REDACTED]'s record. Though we recognize his record contains other areas of competitive concern, we believe Captain [REDACTED] should be afforded the benefit of the doubt and recommend approval of his implied request for removal of his failure of selection if the NJP and the Reviewing Officer comments and marks on the report from 000807 to 010407 are removed from his record.

6. POC is Lt [REDACTED] at (703) [REDACTED]

[REDACTED] 

Lieutenant Colonel, USMC
Head, Officer Counseling and
Evaluation Section
Personnel Management Division

7689-02
✓

DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: (703) 614-2293 OR DSN 224-2293
FACSIMILE: (703) 614-9857 OR DSN 224-9857

MEMORANDUM FOR THE RECORD

DATE: 29AUG02

DOCKET NO: 3368-02

PETITIONER (PET): [REDACTED] MC

PARTY CALLED: PET

TELEPHONE #: N/A

WHAT I SAID: I [REDACTED] EL WANTED TO PURSUE AN SSB ILO HIS ANNUAL PROM BD CONVENING ON 4SEP02.

WHAT PARTY SAID: PET INFORMED ME THAT HE WAS WILLING TO DROP HIS SSB REQ AND HAVE HIS FOS REMOVED.

B George

BRIAN J. GEORGE